United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT

631

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22278

UNITED STATES OF AMERICA, Appellee

v.

ALEXANDER SUTTON, Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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(Appointed by this Court)

935 Washington Building
Washington, D.C. 20005

(Crim. No. 776-67)

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ISSUES PRESENTED

1. Was an adequate foundation laid for the admission in evidence of a series of four Government exhibits, consisting of an envelope and three letters purportedly written by appellant and found at the scene of the crime, particularly when these documents were virtually all the proof the Government had on a crucial issue in the case?

2. With or without these letters, did the Government adduce sufficient evidence of premeditation and deliberation to permit the trial court to submit the case to the jury as one of murder in the first degree?

This case has not previously been before this Court.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22278

UNITED STATES OF AMERICA, Appellee

v.

ALEXANDER SUTTON, Appellant

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

In a two-count indictment filed June 26, 1967, Alexander Sutton was charged with murder in the first degree and carrying a dangerous weapon (a pistol without a license). He was tried by a jury before Judge Gesell of the District Court on June 17, 13, and 20, 1968, and was found guilty as indicted on both counts, but as to the murder count the jury was unable to agree on the question of punishment. By judgment and commitment filed August 19, 1968, Sutton was sentenced to life imprisonment on count one and one year in prison on count two, the sentences to run concurrently. This appeal followed.

Police officers responding to the vicinity of Twelfth and Bellevue Streets, S.E., late in the evening of March 13, 1967, came upon appellant and a woman named Matilda Glass lying on a bank or hill near a group of apartments. One of the officers observed a chrome-colored revolver lying under appellant's right hand (Tr. 125). The officer, Horace M. Parker of

No. 11 Precinct, kicked the gun away from appellant's hand, and a short time later Detective Antonio Ruiz of the Homicide Squad recovered the gun, a .32 caliber pistol, examined it and found that it contained five expended rounds and one live round of ammunition (Tr. 132). Later at Cafritz Hospital, to which the unconscious appellant had been removed, another detective recovered seven more live rounds from the pocket of appellant's trousers (Tr. 170-A - 170-B). Matilda Glass either was dead when the officers arrived or died very soon thereafter; an autopsy the next day disclosed that she had been shot three times, twice in the head and once in the chest (Tr. 49-51).

The circumstances surrounding the shooting were established by the testimony of two Government witnesses. Cornelius Hall and Alfred Brock were both employees of the Smithsonian Institution. On March 13 both of them had worked overtime and happened to meet as they left the building sometime after 10:00 p.m. Hall asked Brock for a ride home, and Brock agreed to take him in his taxicab[1/] (Tr. 63-64, 101-102). They left the Smithsonian and headed for Hall's apartment at 4300 Twelfth Street, S.E., at the corner of Twelfth and Bellevue Streets (Tr. 64, 103), stopping en route to purchase and consume a six-pack of beer.[2/] Finally, as Hall was about to step out of the taxicab in front of his apartment house, the two men saw appellant and Mrs. Glass[3/] getting out of another car which had just parked nearby. Brock and Hall saw them go around to the front of the automobile and embrace. Hall continued:

1/ Hall knew that Brock was a part-time cab driver (Tr. 63, 101).

2/ There was some conflict as to where the beer was drunk and by whom (compare Tr. 64-65 and 93 with Tr. 111-114), but it was undisputed that all the beer had been consumed before the shooting started.

3/ Neither Hall nor Brock was able to identify appellant or Matilda Glass, but other evidence made it clear that they were the man and woman that Hall and Brock saw while seated in Brock's taxicab.

> As they embraced, there was a scream from the woman and then there was a gun fire. The lady, she ran towards the bank and I think she slipped and fell and I noticed the man grabbed her legs or ankle and got upon her and placed a gun at her head. (Tr.68) 4/

According to Hall, it was appellant who fired the first shot, although he was holding the gun "down by his side, by his thigh" (Tr. 96); Brock could not tell who fired the first shot (Tr. 108, 117) and did not see the gun in appellant's hand until after Mrs. Glass had started up the bank (Tr. 108). After she had fallen and was lying on her back on the ground, appellant knelt or leaned down and fired two (Brock, Tr. 105) or three (Hall, Tr. 70) more shots at her. As he did so, Brock and Hall left in search of a policeman. Unable to find one, they returned to the scene and saw appellant "down on one knee, the revolver in one hand and the other hand on the ground" (Tr. 72). Having heard an additional shot as they drove away, Hall concluded that appellant must have shot himself (Tr. 72). They left again with increased urgency to look for the police but found only a NASA security agent, whom they asked to call for help. He did so, and the two men returned again to the scene of the shooting. The police were already there when they arrived (Tr. 107).

Alongside the body of Matilda Glass (Tr. 133) Detective Ruiz found an envelope containing four different letters or notes, three of which played a crucial part in the Government's case at trial.5/ The envelope and its contents were marked for identification, but appellant's counsel objected to the receipt of the letters in evidence on the grounds, inter alia, that they were not "competent or material" (Tr. 140) and were not properly authenticated

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4/ Hall testified that he heard a scream before the first shot (Tr. 69), whereas Brock stated that the shot preceded the scream (Tr. 117).

5/ The fourth letter, Exhibit 10-C, was not admitted in evidence (Tr.152).

or connected with appellant (Tr. 143-144). After an extended discussion in the absence of the jury, during which the court voiced some hesitation about admitting the letters under the particular circumstances of the case,[6] the court overruled the objection and permitted the prosecutor to read the three letters and the envelope to the jury. With the receipt in evidence of a certificate stating that appellant had no license to carry a pistol (Tr. 179), the Government then rested. The court denied appellant's motion for a directed verdict (Tr. 180-181).

From the defense testimony it appeared that appellant and Matilda Glass had been romantically involved and that their relationship had become somewhat stormy just prior to the shooting. James Arthur Sewell, who like appellant and Mrs. Glass was employed at the Shoreham Hotel and who evidently was also involved with Matilda Glass,[7] told of two conversations he had had with her on the subject of guns. On the first occasion, late in 1966 or early in 1967, she had asked Sewell where she could buy a gun (Tr. 185), and then, a short time before her death, she had called Sewell to tell him that appellant had broken into her apartment and she had taken a shot at him and missed (Tr. 186). The police at that time confiscated her pistol, and she wanted Sewell's advice on getting it back, advice which he was unable to provide (Tr. 193-194).

6/ "THE COURT: . . .

> This is one of these highly technical objections that I am concerned about. The circumstantial proof is very strong, extremely strong. But I am not certain, considering the nature of this offense, that I should let them in without their being tied more to him." (Tr. 140)

7/ Sewell identified Government's Exhibit 10-E, one of the three letters in evidence, as one that he had written to the decedent on August 30, 1966. The signature "Arthur," however, was not his own (Tr. 187-188).

Appellant himself elaborated on the latter incident in his testimony (Tr. 222-224) while recounting the breakdown of his relationship with the deceased during the early part of 1967. He identified the gun found at the scene as one which he had purchased in Florida about a month earlier (Tr. 220-221). On the evening of March 13, appellant testified, Matilda Glass came home about 11:00 p.m. in "a rage" and immediately launched a tirade of obscenities. She started toward the bedroom, and appellant, fearing that she was going to get his gun and shoot him with it, went along with her. In the tussle that ensued appellant managed to take the gun and some cartridges from the dresser drawer where they were kept. Putting both gun and bullets into his pocket, appellant left the house only to be followed by Matilda Glass. She reached into his pocket for the gun. They struggled; appellant fell backwards, and the gun went off. Appellant was shot in the chest. The next thing he knew, the police had arrived, and appellant discovered he was unable to speak (Tr. 228-233).

In the course of his testimony appellant acknowledged that he had written some "notes," presumably the letters found at the scene and already in evidence.

> Q. Why did you do that?
>
> A. I was so provokedted (sic) and sick, I think I didn't realize what I had wrote on those notes, but it wasn't intentional, no intentional thing that it happened. (Tr. 230)

On cross-examination appellant stated that the envelope containing the notes had been in the dreaser drawer with the gun and that he had taken it out of the drawer and put it in his pocket along with the gun that same night, although the notes had been written some time earlier and the envelope had been in the drawer for "a few days" (Tr. 270-271). Appellant identified the handwriting on the envelope as his own (Tr. 269).

SUMMARY OF ARGUMENT

The Government failed to lay an adequate foundation for the documents found at the scene of the shooting which comprised virtually its entire evidence of premeditation and deliberation, and the trial court committed reversible error in admitting them without proper authentication. The prosecutor established only that an envelope containing certain letters had been recovered at the scene near the body of the deceased, relying on the contents of the letters themselves to prove their authenticity. At the very least the Government should have offered some independent proof that appellant was the author of the letters; and in the special context of this case, where the documents bore heavily on an essential issue, it was incumbent upon the Government also to make some showing as to when and under what circumstances the letters were written. Admission of the letters without the laying of a sufficient foundation encouraged the members of the jury to speculate on the question of premeditation and deliberation. That they did so is revealed in the verdict which they returned. Their verdict thus based on inadmissible evidence, the conviction cannot stand.

Without the letters the Government had hardly any evidence at all of premeditation and deliberation. Most of the evidence showed at best that appellant had acted on impulse and without reflection in killing Matilda Glass. Only the fact that he had a few bullets in the pocket of his trousers indicated otherwise, suggesting that he might have brought the murder weapon with him on that night. Even if he did, this fact alone was not sufficient to overcome all the other evidence and permit a finding of premeditation and deliberation beyond a reasonable doubt. The questioned documents themselves do not add significantly to the Government's evidence on this point. Only

one of them bears on the issue, and it is so vague and inconclusive that no jury of reasonable men and women, even having heard all that had gone before, could find in it evidence of premeditation and deliberation. The Government's proof was insufficient to such extent that the court erred in submitting the case to the jury as one of first-degree murder.

ARGUMENT

1. No proper foundation was laid for the admission in evidence of the letters and envelope found at the scene of the shooting.

It is hornbook law that the authenticity of any writing must be affirmatively proved by the party seeking the admission of that writing in evidence. Authenticity cannot be assumed, nor will a purported signature or a recitation of authorship on the face of the document be held a sufficient basis for its admission. The courts have generally been most strict in adhering to the rule requiring independent authentication of a writing.[8/] Relying on the weight of authority, appellant submits that Government Exhibits Nos. 10-A, 10-B, 10-D and 10-E were erroneously admitted.

The only extrinsic proof adduced by the Government regarding the letters and the envelope was the fact that they were found at the scene of the shooting, near the body of Matilda Glass, by a Homicide Squad detective who arrived after appellant had been taken to the hospital (Tr. 131). On the basis of this single circumstance the Government contended in effect that

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8/ E.g., Mancari v. Frank P. Smith, Inc., 72 App. D.C. 398, 114 F.2d 834 (1940); Grossman v. U.S. Slicing Machine Co., 365 F.2d 687 (3d Cir. 1966); Olender v. United States, 210 F.2d 795 (9th Cir. 1954); McGowan v. Armour, 248 F. 676 (8th Cir. 1918); In re Maxcy's Estate, 262 Wis. 89, 54 N.W.2d 194 (1952).

the letters were self-authenticating because they purported to be written by appellant[9] and to contain the names of some of appellant's relatives (Tr. 146-149). The letters were absolutely essential to the prosecution because, as the trial court recognized (Tr. 150), they constituted the only evidence the Government had on the issues of motive, premeditation and deliberation. But the Government offered no proof, even when challenged,[10] that appellant had in fact written the letters;[11] more importantly, nowhere in the Government's proof was there the slightest hint as to the time and the circumstances of their writing. Without such a showing, appellant submits, the letters should not have been received in evidence.

A similar issue was presented in Coppedge v. United States, 114 U.S. App. D.C. 79, 311 F.2d 128 (1962), cert. denied, 373 U.S. 946 (1963). Coppedge was tried twice, and at the second trial the prior testimony of a witness named Artis was read into the record, Artis having become unavailable. Defense counsel sought to introduce a letter purporting to be a recantation by Artis of his testimony at the first trial. The letter was not in Artis' handwriting but was believed to have been signed by him. In affirming Coppedge's conviction this Court observed that in view of other evidence as to Artis' "precarious condition of health" and possible "mental deterioration,"

9/ Except of course Exhibit 10-E, the letter bearing the signature "Arthur."

10/ See the Grossman and Olender cases, supra note 8.

11/ The Government attempted to bootstrap its argument by offering a piece of paper, Exhibit 12, found in the pocket of appellant's trousers at the hospital (Tr. 171-172). But Government's Exhibit 12 suffers from the same infirmity as the papers which comprise Exhibit 10. All we know about Exhibit 12 is that it was found in appellant's pocket and that it contains certain names purporting to be those of appellant's relatives (Tr. 173). We do not know who wrote it or when it was written. The Government here has attempted to shore up the weakness in its proof by the use of additional proof with the identical weakness.

> the need for an adequate foundation for the writing was critical, particularly since there was no intimation as to when the writing was signed, by whom it was prepared, the circumstances of the signing or Artis' mental condition at the time of signing. 114 U.S. App. D.C. at 34, 311 F.2d at 133.

Coppedge makes it clear that the evidentiary context of the case and the purpose for which the document in question is sought to be introduced may necessitate even stricter than usual compliance with the rule requiring proper authentication. In the case at bar, where the letters found at the scene were virtually the only evidence the Government had to support a charge of murder in the first degree, the trial court in appellant's view had a particularly grave obligation to insist that an adequate foundation be laid for their admission, an obligation which the court did not fulfill.

Cases in point are few, but there are two which should be mentioned. Cohen v. New York Life Ins. Co., 21 F.2d 278 (3d Cir. 1927), was an action to recover the proceeds of an insurance policy under a double indemnity clause which was invalid in the event of suicide. The decedent had been found in the backyard dead of a gunshot wound in the head, with a revolver containing one empty shell lying a few feet away. The insurer introduced oral testimony as secondary evidence of the contents of a purported suicide note[12/] which had been found in the inside pocket of the decedent's coat in the decedent's room. The handwriting on the note was not identified, nor was the time of writing established. In reversing a judgment for the insurance company the court held:

> It was accordingly prejudicial error to admit testimony as to the contents of the note, just as it would have been to admit the note itself, without identifying the handwriting as that of the deceased and the circumstances under which it was written. 21 F.2d at 280.

12/ The note itself, the best evidence, had been lost.

In People v. Manganaro, 218 N.Y. 9, 112 N.E. 436 (1916), a husband was charged with the murder of his wife. The defense was insanity. An incriminating paper purporting to be the defendant's will was admitted in evidence at trial without proof that the defendant had written or signed it. The prosecution showed only (1) that the document had been found the morning after the homicide on the dresser in the bedroom of the defendant's and decedent's apartment; (2) that for two days prior to its being found the defendant had been the only person living in the apartment; (3) that the killing had taken place in the apartment at 9:30 p.m., and the defendant had remained there alone with the body until 7:00 a.m. the next day (a few hours before the document was found), at which time he left and locked the door; (4) both the document and its envelope were addressed to the defendant's brother-in-law, with whom the defendant had conferred about the decedent's conduct on at least two recent occasions. The New York Court of Appeals held that this was not enough to render the document admissible and reversed the conviction:

> Under the evidence and the defense, the writing was not competent evidence unless it was written by the defendant, and written . . . "shortly before or shortly after the homicide." 218 N.Y. at ___, 112 N.E. at 438.

Similarly, in the case at bar the letters were not competent evidence on the issue of premeditation and deliberation unless the Government could show that they were written "shortly before or shortly after the homicide. Only from such a showing could the jury legitimately infer a connection sufficient to sustain a finding of premeditation and deliberation. By receiving the letters in the absence of such proof, the trial court gave to the jury an opportunity to indulge in impermissible speculation on these issues, speculation which was plainly reflected in the first-degree verdict.

It is thus clear that the letters and the envelope were erroneously received in evidence. The Government should have presented proof not only of their authorship but also of the time when and the circumstances under which they were written. No such proof was offered to the trial court. It follows that appellant's conviction must be reversed.[13/]

2. The evidence of premeditation and deliberation was insufficient to sustain appellant's conviction of murder in the first degree.

The Government relied heavily on the contents of Exhibit 10 to establish the necessary elements of premeditation and deliberation. Without the letters and the envelope there was virtually no evidence at all that in shooting Matilda Glass appellant had acted with the preconceived design to kill that constitutes premeditation and after the reflection and second thought that go to make up deliberation, certainly not enough to permit the case even to go to the jury as first-degree murder. Appellant maintains, moreover, that even if it be assumed arguendo that the letters were properly admitted in evidence, there still was not sufficient evidence to justify a first-degree conviction.

Leaving to one side the letters and the envelope, let us consider the evidence offered by the Government in support of the indictment. Most of the Government's proof came from the two witnesses Brock and Hall. Viewed in the

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13/ It is no answer for the Government to suggest that appellant waived the defect in the proof in the case in chief by admitting in his own testimony that he had written the letters. With the letters already in evidence, appellant would have had to say something about them or else at the very least run the risk of adverse comment by the prosecutor or adverse inference by the jury. By the time appellant took the stand the damage had already been done. Any effort on his part to minimize the impact of the erroneously received evidence should not be held to nullify the error in its admission. See Cephus v. United States, 117 U.S. App. D.C. 15, 324 F.2d 893 (1963).

light most favorable to the Government,[15] their testimony established only that appellant began to quarrel with the deceased one night on the street, fired a shot, pursued her briefly when she tried to get away, caught up with her, struggled for a moment, aimed the gun directly at her and fired three more shots. The onset of the quarrel appeared to be sudden, and its duration was very brief, probably no more than a minute or two. There was nothing in the testimony of either witness to suggest that appellant had given "thought, before acting, to the idea of taking a human life" and had reached "a definite decision to kill," or that he had considered and reflected upon that preconceived design to kill, "turning it over in his mind; giving it second thought."[16] Indeed, the testimony of Brock and Hall points the other way, seeming to fit with far greater ease the language of this Court in Bullock v. United States, 74 App. D.C. 220, 221, 122 F.2d 213, 214 (1941): "There is nothing deliberate and premeditated about a killing which is done within a second or two after the accused first thinks of it."

There is only one small item of evidence in the Government's case in chief that has any bearing at all on appellant's state of mind prior to the firing of the first shot: the fact that he had seven bullets in his pocket (Tr. 170-A). At most this fact might lend support to the inference that appellant brought the gun with him on the fateful night.[17] In Belton v.

15/ Crawford v. United States, 126 U.S. App. D.C. 156, 375 F.2d 332 (1967); Curley v. United States, 81 U.S. App. D.C. 389, 160 F.2d 229, cert. denied, 331 U.S. 837 (1947).

16/ See Austin v. United States, 127 U.S. App. D.C. 180, 186 n.12, 382 F.2d 129, 135 n.12 (1967), quoting from the instructions of the trial court in Fisher v. United States, 328 U.S. 463 (1946).

17/ But see Hemphill v. United States, D.C. Cir. No. 21432, decided June 12, 1968. The extreme weakness of the Government's proof as to the origin of the murder weapon here makes all the heavier the Government's burden of proof aliunde as to premeditation and deliberation.

United States, 127 U.S. App. D.C. 201, 382 F.2d 150 (1967), this Court in affirming a first-degree murder conviction relied heavily on testimony that the defendant had entered the apartment where the crime was committed with a loaded gun. But in Belton that was not the only evidence that bore on the issue of premeditation and deliberation. There was other testimony that Belton and the deceased had quarreled that very day as they had often in the past, and there was further evidence that he had been seen with the same gun on several prior occasions. In the instant case, by contrast, the Government offered no proof of any prior dispute between appellant and Matilda Glass; indeed, there was no evidence of any kind as to the nature of the relationship between them (except perhaps the testimony of the two eyewitnesses that they had embraced briefly before the shooting). There was no other proof at all connecting appellant with the gun. Belton is thus distinguishable and in appellant's estimation is not dispositive of the case at bar. Even if it be assumed from the finding of the bullets in appellant's pocket that he carried the gun in the same pocket, this fact alone cannot "provide a reasoned basis for concluding beyond a reasonable doubt"[18] that appellant's act was anything more than what it must have appeared to the witnesses to be: a homicide "committed on impulse or in the sudden heat of passion."[19]

Furthermore, assuming arguendo that the letters were properly authenticated and received in evidence, they were nevertheless inadequate as proof of premeditation and deliberation to let the case go to the jury as indicted.

18/ Austin, supra at 191, 382 F.2d at 140.

19/ Id. at 188, 382 F.2d at 137.

Of the four documents only Exhibit 10-B has any significance on this point.[20] It is apparent from a reading of this letter that its author did not expect to be around when it was read by its intended recipient---in other words, that he was contemplating not murder but suicide. Most of the message deals with the author's financial condition and with the disposition of certain items of personal property. Concerning the issues involved here there are only three sentences that are relevant:

> I would not have done this but Matilda made me do this. Now we will both are in bad shape. I have no other choice at all.

What is "this" that Matilda made him do? Can twelve reasonable jurors reading these words, knowing only what they have heard from Brock and Hall and the three police officers, find beyond a reasonable doubt that the author of this letter had formed a specific intent, "a definite decision to kill" Matilda Glass, and find further that during an "appreciable" lapse of time he had considered and reflected upon that decision, turning it over in his mind and and ultimately resolving to act upon it? Appellant submits that such a finding would be without support.

It must be stressed that this issue is to be determined on the basis of the evidence as it stood at the conclusion of the Government's case. Appellee cannot rely on any testimony adduced by appellant after the erroneous denial by the trial court of his motion for judgment of acquittal. It is no longer open to the Government to contend that appellant "waived" his motion by putting on a defense to a charge which the Government was not entitled to submit to the jury. Austin v. United States, supra at 139 and n.20, 382 F.2d at 138 and n.20; Belton v. United States, supra at 203 n.2, 332 F.2d at 152 n.2; Cephus v. United States, supra.

20/ Exhibit 10-A, the envelope, bore only names, telephone numbers and delivery instructions. Exhibit 10-D was evidently meant as an editorial comment on Exhibit 10-E, the letter signed by "Arthur."

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be reversed.

JOHN A. TERRY
Counsel for Appellant
(Appointed by this Court)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief was personally served at the office of the United States Attorney, Room 3600, United States Court House, Washington, D.C., this 11th day of December 1968.

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BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,278

UNITED STATES OF AMERICA, APPELLEE,

v.

ALEXANDER SUTTON, APPELLANT.

Appeal from the United States District Court for the District of Columbia

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* Cases chiefly relied upon are marked by asterisks.

ISSUES PRESENTED

In the opinion of appellee, the following issues are presented:

I. Was there an abuse of discretion by the trial judge in admitting an envelope, and the letters contained therein, found at the scene of a homicide which was addressed from appellant to certain family members, against the mere claim that no connection to appellant was shown, where, in addition to appellant being seen shooting the deceased in the head, and being found on the scene injured himself, the contents of the letters revealed requests, instructions and gifts in apparent contemplation of death, intimate knowledge of personal affairs and possessions, despair over an unrequited love, and such matters as were possibly known only by the writer and which were consistent with the character of the fatal events?

II. Was the evidence on premeditation and deliberation sufficient to go to the jury after the close of the Government's case, and if so, can it now be considered sufficient under all the evidence to sustain this conviction for first degree murder?

This case has not previously been before this Court.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22,278

UNITED STATES OF AMERICA, APPELLEE

v.

ALEXANDER SUTTON, APPELLANT

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

This is an appeal from a judgment of conviction for first degree murder (22 D.C. Code § 2401) and carrying a dangerous weapon (22 D.C. Code § 3204) entered after trial by jury before Judge Gerhard A. Gesell on June 17, 18 and 20, 1968. The jury could not agree on punishment and appellant was sentenced August 16, 1968 to life imprisonment on the murder charge and concurrently with this, to one year imprisonment for the weapon charge.

The Homicide

On the evening of March 13, 1967 Cornelius Hall, after completing overtime work at the Smithsonian Institute met Alfred Brock, a fellow-employee and part-time cab driver, who having also just finished working, agreed to take Hall home (Tr. 61-64, 100-102). After a slight detour to purchase and consume a few beers, they drove to Hall's home at 4300 Twelfth Street, Southeast, around 11:00 or 11:30 p.m. (Tr. 64-66, 102-103). As Hall was alighting from the car, they saw a woman and a man get out of a car parked on the opposite side of the street and walk to the front of the car where they kissed and embraced (Tr. 66-68, 94-95, 103-104). Suddenly, the woman screamed and the man fired a gun. She ran a short distance up a hill, but fell (Tr. 68-69, 95-96, 104-105). The man, after grabbing her by the leg, turned her on her back, kneeled and placed the gun point-blank at her head and fired it several times (Tr. 69-70, 87-88, 97, 110, 118). As they left to find a policeman, Hall and Brock heard another shot. When they shortly returned to the scene, the man was kneeling over the woman's body, one hand on the ground and the other still holding the revolver (Tr. 71, 72, 104). With even more urgency, they left the scene again to find a policeman, and this time upon their return, policemen were already there (Tr. 72-73, 107).

Police Officer Horace M. Parker found the woman appearing lifeless and the man, identified as appellant, lying nearby with a revolver under his hand, but still showing signs of life (Tr. 124-125). The gun recovered by Detective Antonio F. Ruiz of the Homicide Squad contained five expended rounds and one live cartridge (Tr. 130-132). Seven other live cartridges were recovered from appellant's pants pocket at the hospital where he was later taken (Tr. 170A-170B). The woman, Matillda Glass, apparently died on the scene. There were three slugs in her body: one, shattering several teeth, was embedded in the tongue, another lodged in the brain,

while the third, determined to be the most fatal, penetrated the heart and liver before lodging in the stomach (Tr. 49-52).

The Letters

Found alongside the body of the woman was an envelope addressed from appellant to his daughter and wife[1] (Tr. 138-139). The envelope contained several letters, two of which, referred, among other things, to disposition of his personal property, troubles with the deceased, and another man, "Arthur,"[2] while a third appeared to be a

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[1] Government's Exhibit 10A:

From Alexander Sutton to daughter, Frances D. Sutton, JA 26671. Wife, Birdie Mal Sutton, 587-2456. Call them at once. Fort Lauderdale, Florida. My mother JA 22779 (Tr. 174).

[2] Government's Exhibit 10B:

To my daughter. Call her at Florida, JA 26671 587-2456 Frances D. Sutton, Fort Lauderdale, Florida.

The car note is paid until April 12. It is paid until then until it paid for March 12. Send it on the 13th. Frances don't worry about what happened. You all just keep the car. I am sick. Let me say this. I might not get a chance to paid, but it might be in my pocket and the car where I send the money over to you all I have the most of the thing fix up.

I have some money on my job. I would have not done this but Matilda made me do this. Now we will both are in bad shape. I have no other choice at all. I have something pack. All of the lamps of mine, two floor lamps, one table lamp. Frances, the car may be paid for. These are the people that owe me where I work at the Shoreham West. These are the number.

Mr. Mazor, L614, $25. Mrs. Sherling [or Sherring], L2517, $25. Mr. Birch, L312.

Just a few days there are two snow tires put in the receiving room. One way or the other, it will be two of some kind left in there. The diamond ring give it to Jal on my finger. The watch for Lloyd, my son. I have spent hundred of dollars on this woman. But the judge will not believe it or the jury.

There are some checks to show and the rest in cash. Hub Furniture Store and we will put a hundred on the house which was my money. I have live with her for at least five or five and half months. She were treated better than my wife or any other woman. There is $40 of $47 in my pocket. Bessie Sutton, mother, Fort Lauderdale, Florida, JA 22779. Birdie Sutton,

love letter written by one "Arthur".[3] These items were admitted into evidence over defense objection that they had not been tied to appellant (Tr. 143, 151, 156). Also admitted over objection was a note recovered from appellant's pants pocket at the hospital which stated the names of his mother, wife and daughter with apparent telephone numbers,[4] corresponding essentially to the matters on the face of the envelope found on the scene of the crime (Tr. 170C, 172).

The Defense

James Arthur Sewell testified that he met the deceased at the Shoreham Hotel, where they both worked, and had come to know her socially (Tr. 182). He also knew appellant but saw him only occasionally (Tr. 183).

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wife, Fort Lauderdale, Florida, 587-2456. My daughter, Frances Sutton, JA 26671. (Tr. 174-176).

Government's Exhibit 10D:

Read this other note. This nigger carry her home Sunday night after she got off the L2 bus. His name is Arthur, drive Number 10 cab. It called Skyview. (Tr. 177).

[3] Government's Exhibit 10E:

8/30/66
Room 332

Hello there, well, this is the last day before the ax falls, so I guess I will say a few things just in case. I just want you to know that I will always cherish the moments and time that I have spent with you and even today I have the same feeling in respect for you that I had the day I stopped you in the Shoreham driveway.

Maybe if my money had been longer, things would have been different, but just so you are happy, that all that really matters.

If this comes out okay someday later, I hope I can make you real happy like we used to be, at least for one day, anyhow.

But always remember I do love you regardless of what or who. Please be careful and don't do anything to get yourself in trouble. Love, Arthur. (Tr. 177-178).

[4] Government's Exhibit 12:

Call Fort Lauderdale, Florida, JA 22779, mother Bessie Sutton, 587-2456. Wife, Birdie Neal [?] Sutton, daughter, Frances Sutton [more numbers]. (Tr. 178).

In March 1967 the deceased told him that she shot at appellant because he had broken into her apartment. The police had taken her gun and she wanted to know whether she could get it back (Tr. 185-186, 191-194). (It was before this, either in late 1966 or early 1967 that the deceased had asked him where she could get a gun, Tr. 185, 192). Mr. Sewell admitted writing a letter [5] to the deceased when he learned that she was going to "keep company" with appellant, however, the signature of "Arthur" on the letter was not his, nor were various underlines, and he did not know who added them (Tr. 187-188, 197-199). Although he did not see the deceased socially after she met appellant, he did speak to her briefly on the morning of the ill-fated day, March 13, as she was on her way to court in connection with her complaint against appellant. He asked her to call him later with respect to the outcome of the case. (Tr. 190, 195-196, 201).

Appellant described in his testimony initially a happy relationship with the deceased whom he met in January 1966 when they both worked at the Shoreham Hotel and with whom he started living the following month (Tr. 213, 216). He paid bills and rent, bought furniture for the apartment, and there had been intentions of buying a house (Tr. 215-216, 237-238). Sometime in November or December 1966, when he first met Mr. Sewell, whom he knew only as "Arthur", it was after Mr. Sewell had taken the deceased to inspect some houses, for which appellant paid him (Tr. 217-218). It was also about this time that appellant, while cleaning his car, discovered a love letter from "Arthur",[6] and thereafter the relationship with the deceased soured (Tr. 218-220). A short time later in February 1967, appellant bought a gun, as it developed the murder weapon, and ammunition while vacationing in Fort Lauderdale, Florida with which he returned to the District of

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[5] Government's Exhibit 10E, note 3, *supra*. The letter was in the nature of a lover's farewell.

[6] *Ibid.*

Columbia (Tr. 127, 132, 220-221, 276-277). His gun and one possessed by the deceased were both kept in a dresser drawer in their apartment (Tr. 220-222).

Shortly before the fatal day on March 13, the first violent incident occurred between the deceased and appellant (Tr. 242). Appellant stated he had gone to the store for the deceased, only to return to find the door locked and his key unable to open it. When he forcibly entered the deceased shot at him for no apparent reason, but he was able to subdue and restrain her until the arrival of the police (Tr. 221-223, 239-246). The incident resulted in appellant being taken to court on the deceased's complaint of unlawful entry and destroying property, and although the matter was continued for a future date, appellant could not remember whether March 13 was the exact date or not (Tr. 223-224, 246-251). However, he and the deceased continued to live together, even though later in the same day of his court appearance the deceased made it clear she desired him no longer and preferred Arthur (Tr. 223-225, 251-252, 280). Appellant, extremely upset, nevertheless tried to improve the relationship and continued to give her money (Tr. 225-226, 280).

On the night of March 13, the deceased came into the apartment in a rage. She called him names, quarrelled with him about money for a house, and eventually said, "I will fix you" before walking off toward the bedroom (Tr. 228-229, 253-257). Fearing the deceased was going after his gun, appellant rushed to the bedroom, got his loaded gun from the dresser drawer,[7] and put it in his coat pocket (Tr. 229-230, 257-259). Before hurrying out of the apartment, appellant also took from the drawer several cartridges and an envelope,[8] containing letters he had written at some unrecallable time, and placed there a few days previously (Tr. 230, 269-271). The de-

[7] The deceased's gun which appellant indicated had also been kept in the same drawer, was no longer there, having been taken by the police (Tr. 220, 261).

[8] Government's Exhibit 10A; note 1, *supra*.

ceased, following him outside into the backyard, reached into his coat pocket and grabbed the gun as appellant walked down the hill towards his car on the street (Tr. 231, 262-264, 266). Appellant grabbed her, but slipped and fell, at which moment, the deceased falling on top of him, shot him in the chest. He grabbed her again when the gun discharged a second time and, becoming weak, appellant fell to the ground (Tr. 231-234, 262, 264, 267, 271-272). Appellant, unable to speak when the police arrived, did not recall ever taking the gun from the deceased or her being shot (Tr. 232, 234, 272).

ARGUMENT

I. The envelope and letters found at the scene of the crime were properly admitted into evidence.

(Tr. 41, 124-125, 129, 145, 148, 151-154, 159-160, 170, 174-177).

Appellant contends that the envelope and letters found at the scene of the crime should not have been admitted in evidence as bearing on the issue of premeditation and deliberation because there was no proof of authorship. We disagree.

Appellant does not assume, nor do we, that the authenticity or genuineness of the writings must be proved by direct evidence or handwriting analysis, which was absent here. As circumstantial evidence may be used to show that the writings were those of a certain person,[9] the question was one of sufficiency of the showing for a determination by the trial judge in the exercise of his discretion.[10] The various circumstances here to jus-

[9] *Hartzell* v. *United States*, 72 F.2d 569, 578 (8th Cir. 1934), and cases cited therein; 7 Wigmore, EVIDENCE §§ 2131, 2148 (3rd ed. 1940); McCormick, EVIDENCE § 190 (1954); 23 C.J.S., Criminal Law, § 850.

[10] *Schwartz* v. *United States*, 56 App. D.C. 105, 10 F.2d 900 (1926); *Arena* v. *United States*, 226 F.2d 227 (9th Cir. 1955), *cert. denied*, 350 U.S. 954 (1956); *State* v. *Huffman*, 141 W. Va. 55, 87 S.E.2d 541 (1955).

tify admission and consideration by the jury are difficult to characterize as anything but strong and overwhelming.

Initially, there was a most apparent circumstance. The envelope, Government's Exhibit 10A, found alongside the body of the deceased, included the name of appellant as the purported writer:

> *From Alexander Sutton* to daughter, Frances D. Sutton . . . Wife, Birdie Mal Sutton . . . . (Tr. 174).

Inasmuch as appellant was himself on the scene, the identity in name was presumptive evidence of identity of person.[11] The identity and the presence of appellant naturally tended to establish the purported authorship, and this, without more, could justify the envelope and its contents going to the jury.[**] However, other circumstances warranting admission abound in the letters found in the envelope.

While generally mere contents of a written communication, purporting to be a particular person's, are of themselves not sufficient evidence of genuineness, in special circumstances where the contents reveal a knowledge or other trait peculiarly referable to a certain person, a proper foundation exists for admission. *Hartzell* v. *United States*, 72 F.2d 569 (8th Cir. 1934); *State* v. *Huffman*, 141 W. Va. 55, ——, 87 S.E.2d 541, 552 (1955) and authorities cited therein; 7 Wigmore, EVIDENCE § 2148 (3rd ed. 1940); 23 C.J.S., Criminal Law, § 850, p. 327. Here the letters, bearing classic earmarks contemplative of homicide-suicide, stated matters which relate to and could have only been known by the author. Government's Exhibit 10B,[12] for example, included the following as to his car and finances:

> The car note is paid until April 12. It is paid until then until it paid for March 12. Send it on the 13th.

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[11] *Jacobs* v. *United States*, 58 App. D.C. 62, 24 F.2d 890 (1928); 7 Wigmore, *op. cit. supra* note 9, § 2156; 9 Wigmore, *op. cit. supra*, § 2529.

[12] Set out fully in note 2, *supra*.

> Frances, don't worry about what happened. You all just keep the car. . . . Let me say this. I might not get a change to paid, but it might be in my pocket and the card where I send the money over to you all I have the most of the thing fix up. I have some money on my job. (Tr. 174-175).
>
> * * * *
>
> There is $40 of $47 in my pocket. (Tr. 176).

as to his debtors:

> These are the people that owe me where I work at the Shoreham West. These are the number. Mr. Mazor, L614, $25. Mrs. Sherling [or Sherring], L2517, $25. Mr. Birch, L312. (Tr. 175).

as to other personal property and gifts to family:

> I have something pack. All of the lamps of mine, two floor lamps, one table lamp, Frances the car may be paid for.
>
> * * * *
>
> Just a few days there are two snow tires put in the receiving room. One way or the other, it will be two of some kind left in there. The diamond ring give it to Jal on my finger. The watch for Lloyd, my son. (Tr. 175).

Additionally, the knowledge of family members, their whereabouts, even apparent telephone numbers [13] is so intimate as to be only that which the purported writer would likely have, and to this extent is inconsistent with forgery.

Moreover, the letter reveals a trait peculiarly referable to the author and perpetrator of the observed acts.[14] It evinced a state of mind compatible with the romantic ex-

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[13] See notes 1 and 2, *supra*.

[14] While neither eyewitness to the shooting identified appellant in court, his identity as the one who shot the deceased several times before they left the scene, was clear and virtually unquestioned (Tr. 124-125, 129).

pression, kissing and embracing, preceding the crime, and the crime itself:

> I am sick.
>
> * * * *
>
> I would have not done this but Matilda made me do this. Now we will both are in bad shape. I have no other choice at all.
>
> * * * *
>
> I have spent hundred of dollars on this woman. But the Judge will not believe it or the jury. There are some checks to show and the rest in cash. Hub Furniture Store and we will put a hundred on the house which was my money. I have live with her for at least five or five and a half months. She were treated better than my wife or any other woman. (Tr. 175-176).

Added to the unrequited love was the deceased's suspected relations with a third person:

> Read this other note.[15] This nigger carry her home Sunday night after she got off the L2 bus. His name is Arthur, drive Number 10 cab. It call Skyview. (Government's Exhibit 10D) (Tr. 177).[16]

True, independent evidence of appellant's relations with the deceased and knowledge of "Arthur" was not, or could not have been, presented to the trial judge[17] in the Government's case[18] but the knowledge and characteristic

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[15] An obvious reference to a farewell love letter, which the trial judge could reasonably infer was to the deceased, found in the same envelope. See note 3, *supra*.

[16] Though a separate exhibit, this is probably a continuation of Government's Exhibit 10B.

[17] Appellant stated as much however in his opening statement (Tr. 41).

[18] Although the question involved impeachment, and not an element of the crime as here, in *Schwartz* v. *United States*, *supra*, note 10, this Court found no error in permitting defendant to be *cross-examined* concerning a particular woman as a foundation for introduction in rebuttal of letters and envelopes bearing handwriting ascribed to him.

trait exhibited by the letters made it probable, if not certain, that appellant wrote them.[19]

Furthermore, it can be fairly inferred in view of appellant's presence that he was in possession of the envelope containing the letters immediately prior to the shooting. In addition, a note containing the names of family members in Fort Lauderdale, Florida and their apparent telephone numbers, essentially the same as those on the face of the envelope,[20] was recovered from appellant's pants pocket after he had been taken to the hospital for emergency treatment[21] (Tr. 151, 170-171, 178). Therefore, possession of these documents was an addi-

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[19] Also the letters themselves tend to show approximately "when and the circumstances under which they were written." (Appellant's brief, p. 11). We read in the cases, suggested by appellant as requiring this showing, exceptional circumstances making it there appropriate. *Coppedge* v. *United States*, 114 U.S. App. D.C. 79, 331 F.2d 128 (1962), *cert. denied*, 373 U.S. 946 (1963) (letter purporting to be *recantation* of a witness, unavailable at second trial, of his testimony at first trial where "no intimation as to when the writing was signed, by whom it was prepared, the circumstances of the signing or [the witness'] mental condition at the time of signing); *Cohen* v. *New York Life Insurance Co.*, 21 F.2d 278 (3rd Cir. 1927) (only *oral testimony* as to the contents of a purported suicide note); *People* v. *Manganaro*, 218 N.Y. 9, 112 N.E. 436 (1916) (first degree murder: the writing purporting to be a *will* signed by defendant in Italian language, in envelope addressed in English but in addition to no evidence of defendant's ability in any language, it was rebuttal evidence over *insanity defense* with circumstantial weaknesses, e.g. writing not found in possession of defendant).

Contemporaneity is indicated here, among other things, by reference to current debtors and the amount of money appellant would have when found. See text, pp. 16-17, *infra*, for fuller discussion. Certainly, absence of any date on the letters would not be fatal. *People* v. *Reid*, 193 C. 491, 225 P. 859 (1924).

[20] Compare Government's Exhibit 12, note 4, *supra*, with Government's Exhibit 10A, note 1, *supra*.

[21] Moreover, Government's Exhibit 10C for identification, also found in the envelope but withdrawn for admission, referred to yet another note in appellant's locker at work which the trial court we think was not obliged to ignore, though it perhaps did in determining authentication from other rich sources (Tr. 144-145, 152-153). (References to this note were deleted from the admitted exhibit, Tr. 145-146, 152-154, 159).

tional factor furnishing authentication. *Hyde* v. *State*, 196 Ga. 475, ——, 26 S.E.2d 744, 749 (1943); see *People* v. *Manganaro*, 218 N.Y. 9, 112 N.E. 436 (1916).

Under these strong circumstances, the trial judge did not abuse his discretion in admitting these documents.[22]

II. Ample evidence of premeditation and deliberation justified submission of the first degree murder charge to the jury, and will sustain its verdict.

(Tr. 71-72, 104, 124-125, 160, 174-176, 214-216, 218-221, 225, 227-228, 230, 36-38, 246-251, 269-271, 276-277).

Appellant claims that there was insufficient evidence of premeditation and deliberation not only to submit to the jury at the close of the Government's case but to sustain its verdict on this necessary element after all the evidence. We find it difficult to posit a more compelling case at either juncture.

After the Government's Case

Shelving momentarily the handwritten matters found on the scene of the crime and discussed in the preceding argument, the Government's case was one of strong direct evidence. Two eyewitnesses, Cornelius Hall and Alfred Brock, saw appellant and the deceased get out of a car parked a short distance away.[23] They saw them meet in front of the car, kiss and embrace, when a shot was fired[24] (Tr. 67-68, 103-104). The woman, screaming and trying to flee, fell when appellant caught her by the leg,

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[22] We think the facts went far beyond a prima facie showing of genuineness and authorship, and the jury, subject to any counter-proof appellant wished to make, should have been allowed to make its own inference. As it developed, authorship of the documents referred to here was never a question beyond putting the Government to its proof (Tr. 148, 230, 269).

[23] Hall saw them arrive (Tr. 66).

[24] Hall discerned that the man, identified by other evidence as appellant, fired this shot (Tr. 96).

turned her on her back, placed the gun to her head, and fired, point-blank, several times.[25] As Brock and Hall left the scene for the police, another shot was heard (Tr. 71-72, 104). When the police arrived appellant was groaning and lying a few feet away from the apparently lifeless body of the deceased with a gun under his hand (Tr. 124-125). Several live cartridges were later recovered from appellant's pocket (Tr. 170A-170B).

Even if barely so, these circumstances alone showed enough premeditation, i.e., "formation of a specific intent to kill," [26] and deliberation, i.e., "turning it over in the mind" [27] to go to the jury. In *Belton* v. *United States*, 127 U.S. App. D.C. 201, 382 F.2d 150 (1967) this Court regarded the significant fact that appellant had a loaded gun as "permit[ting] an inference that he arrived on the scene [the victim's apartment] already possessed of a calmly planned and calculated intent to kill. . . ." *Id.* at 203, 382 F.2d at 152. Likewise, the inference was permissible, if not inescapable, here. Could not a reasonable man infer from the intimate expression in front of the car, a romantic or affectionate relationship between appellant and the deceased? And from the next incongruous events, firing the gun several times into the woman without any precedent quarrel,[28] apparent conversation, or warning, could one not also infer preparation reflecting premeditation? Similarly, that there was the

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[25] Hall indicated three shots at this time, Brock about two (Tr. 70, 104). The examining coroner found three slugs in the deceased's body: one in the mouth, another in the brain, having entered under the chin at a place surrounded by apparent powder burns, and the third, penetrating the heart, in the stomach (Tr. 49-50).

[26] *Fisher* v. *United States*, 328 U.S. 463, 469 (1946), *affirming*, 80 U.S. App. D.C. 96, 149 F.2d 28 (1945).

[27] *Ibid.*

[28] There was no quarrel as appellant, we think mistakenly, assumes (Appellant's brief, p. 12) or anything which would suggest the fatal acts were precipitated by a sudden passion, rage, or impulse.

While quarrels are considered in *Belton* as tending to show motive there, unlike here, no other conduct aside from the shooting was present from which state of mind could be inferred.

lapse of an "appreciable time" for deliberation, which could be minutes,[29] is shown by the nature of appellant's preparation in coming to the apparently appointed place fortified to execute his plan to kill.[30] Admittedly, these were not the only inferences that could be drawn, but certainly the events here did not make them impermissible.

When the envelope and letters found on the scene of the crime are considered, a hornbook case of premeditation and deliberation unfolds. The revelations of those letters, which will not be repeated fully here,[31] provide clear insight into the state of mind of one frustrated and disappointed in love, not only contemplating destruction of himself, but, as not too uncommonly the case in the triangular love affair, of his loved object as well:

> I would not have done this but Matilda made me do this. Now we . . . both are in bad shape. I have no other choice at all.
>
> * * * *
>
> I have spent hundred of dollars on this woman. But the Judge will not believe it or the jury.
>
> * * * *
>
> I have live with her for at least five or five and a half months. She were treated better than my wife

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[29] *Parman* v. *United States*, —— U.S. App. D.C. ——, 399 F.2d 559 (1968); *Austin* v. *United States*, —— U.S. App. D.C. ——, 382 F.2d 129 (1967); *Frady* v. *United States*, 121 U.S. App. D.C. 78, 348 F.2d 84, *cert. denied*, 382 U.S. 909 (1965); *Bullock* v. *United States*, 74 U.S. App. D.C. 220, 122 F.2d 213 (1941); *Bostic* v. *United States*, 68 App. D.C. 167, 94 F.2d 636 (1937), *cert. denied*, 303 U.S. 635 (1938).

[30] We are unwilling to assume that appellant habitually carried a gun and a ready supply of ammunition. Compare *Austin* v. *United States*, *supra*, note 30, where the accused habitually carried the murder weapon, a pocket knife used to trim fingernails; *Hemphill* v. *United States*, D.C. Cir. No. 21,432, decided June 12, 1968, where there was no evidence to show origin of the murder weapon, a hammer.

[31] See text, pp. 8-10 and note 2, *supra*.

> or any other woman. (Government's Exhibit 10B, Tr. 175-176).

We do not believe with this, the fatal events, and the favorable inferences therefrom, that a reasonable juror must have had a reasonable doubt [32] as to premeditation and deliberation. The Court properly submitted the case to the jury.

After All The Evidence

With appellant's testimony there was an iron-clad case of premeditation and deliberation. He reveals that he and the deceased lived together for several months harmoniously. However, in December 1966 or January 1967 he finds a love letter apparently to the deceased from one "Arthur" and the relationship starts deteriorating (Tr. 218-220). In February, while visiting his wife and family in Fort Lauderdale, Florida, he buys a gun and cartridges with which he returns to the District of Columbia (Tr. 220-221, 276-277). The relationship is still faltering when on March 3, he is shot at, but missed by the decedent for breaking into the apartment, which incident results in her preferring charges against him for unlawful entry and destroying property (Tr. 223-224, 246-251). The case is continued in court, and appellant learns the same night from decedent that ". . . she didn't want me no more, she had found somebody else, . . . this fellow, Arthur." (Tr. 280). With this, appellant, who had given the deceased everything she had asked for, paid bills, bought furniture, made a deposit on a house, and was "deeply in love" with her, "went to pieces" (Tr. 214-216, 219, 236-238, 280).

The jury certainly from these events could believe that appellant charged with criminal offenses and cast aside by the one he loved, had ample motive to kill. Moreover, appellant removed any doubt that might have lingered con-

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[32] *Crawford* v. *United States*, 126 U.S. App. D.C. 156, 375 F.2d 332 (1967); *Curley* v. *United States*, 81 U.S. App. D.C. 389, 160 F.2d 229, *cert. denied*, 331 U.S. 837 (1947).

cerning the letters and their authorship (Tr. 230, 269). The jury could believe that some time shortly before the fatal events appellant wrote the letters,[33] put them in an envelope addressed to family members, his wife, mother and daughter. Appellant must have reflected many times upon the thought of killing the deceased as well as himself,[34] before deciding to make this communication containing his last request, instructions, and gifts. In any event, there are several indications that appellant wrote the notes fairly contemporaneously to the time he planned to kill the deceased.[35] Suffice it here to indicate a few fairly apparent ones. The envelope, letters and note were found on his person (Tr. 171, 269-270). In the letter, Government's Exhibit 10B, he indicates his car note is paid until March 12, the day before the murder, and that the next payment would not be due until April 12. He refers to personal property, a diamond ring and a watch, which he expects to be wearing when he is discovered, presumably dead. He refers to current debtors and precise amounts owed. Most significant, however, he expects to

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[33] While appellant said he did not write the letters on the night of the murder and could not recall exactly when he did write them although previous to this night, the envelope with the letters in it appellant claimed were put in a dresser drawer a few days before the shooting and removed by him when he got his gun and cartridges kept in the same place (Tr. 269-271).

[34] Appellant must concede as much in stating that appellant might have contemplated suicide but not murder when he wrote the letter. (Appellant's brief, p. 14). The basis for this assertion is language found in Government's Exhibit 10B which we think equally shows the contemplation of murder:

> I would have not done this but Matilda made me do this. Now we will *both* are in bad shape. I have no other choice at all. (Emphasis added.) (Tr. 175).

[35] If appellant did not work at his usual employment before or on the fatal day as he indicated, there was of course ample opportunity for him to write the letters, and put notes in his locker at the Shoreham, which could have been accomplished on the trip he made there shortly before the shooting (Tr. 227-228, 257). The Government chose not to offer these possibly cumulative notes (Tr. 145, 160).

have a certain quantity of money on him when his deed is discovered: "There is $40 of [or] $47 in my pocket." (Tr. 176). Not to be omitted, is a certain triggering quality that can fairly be found in this language:

> Read this other note. This nigger carry her home *Sunday night* after she got off the L2 bus. (Tr. 177) (Emphasis added). [*The day before the murder was a Sunday*].

Withal, the evidence was abundant on premeditation and deliberation and can sustain this conviction.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

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